IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 297 of 2002

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARJUNSINH KULUSINH KHANT

Versus

YOGESH M BHATT

Appearance:

1. Criminal Revision Application No. 297 of 2002

MR HS MUNSHAW for Petitioner No. 1

MR KB PUJARA for Respondent No. 1

Mr.K.B.Raval, A.P.P. for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 28/04/2005

ORAL JUDGEMENT

1. This Criminal Revision Application filed under

Section 397 read with Section 401 of the Criminal Procedure Code, 1973 is directed against the judgment and order dated 23rd April, 2001 passed by the learned Judicial Magistrate, First Class, Dabhoi, granting "B" Summary in Dabhoi Police CR no.I/206/2000.

2. The facts leading to the filing of the present Criminal Revision application are that somewhere in the year 1995-96, the respondent no.1 herein was serving as a Headmaster at Pansoli Primary School run by the Dabhoi Taluka Panchayat. It is alleged against the respondent no.1 that he had cut 100 trees of Nilgiris from the school premises without taking any permission from the District Development Officer or any other authority even though the said trees were not endangerous to the students of that school. It is further alleged against the respondent no.1 that he had neither informed the District Primary Education Officer, Vadodara, with regard to the cutting of the Nilgiri trees nor fixed the upset price for selling of the trees. The respondent no.1 had also not followed the procedure for selling moveable or immoveable properties belonging to Panchayat or Government as required under Sections 165,166,170 and 177 of the Bombay Land Revenue Code. It is also alleged that the respondent no.1 had failed to deposit the amount of Rs.70,000/- received from the sale of trees in time and produced forged documents and in that he has committed offence under Section 409 of the Indian Penal Code for which a criminal complaint came to be lodged against the respondent no.1 on 12th October, 2000 before Dabhoi Police which came to be registered as CR. No.I 206/2000. After completing the necessary investigation, the Investigating Officer of Dabhoi Police Station submitted the relevant documents before the learned Judicial Magistrate, First Class, Dabhoi, seeking "B" summary on 30th January, 2001. According to the applicant, the learned Judicial Magistrate, First Class, then issued notice to the complainant who remained present and submitted an application Exh.4 on 23rd April, 2001 and relying upon such application of the complainant wherein it was stated that he has no personal knowledge regarding the incident of cutting trees; that the complaint has been lodged as per the instructions of the higher officers and hence, the complainant does not want to proceed further with the matter and therefore the learned Judicial Magistrate, First Class, Dabhoi, granted "B" Summary as sought for by the Investigating Officer by order dated 23rd April, 2001 which is the subject matter of challenge in the present Criminal Revision Application.

3. Learned Counsel Mr. H.S.Munshaw for the applicant has contended that the learned Judge has erred in holding that the complainant had no knowledge about the criminal case and that the complainant did not want to proceed further with the case. It was also contended by the learned Counsel that in the application made by the complainant below Exh.4 there is a statement to the effect that the documents relating to the commission of offence has not been received by the complainant from the higher officers, but that by itself does not indicate that no offence is made out. Learned Counsel further contended that the respondent no.1 ought to have taken permission from the concerned authority and ought to have also followed the procedure laid down under Secs.165, 166, 170 and 177 of the Bombay Land Revenue Code before cutting the trees/ selling them. On these grounds, it is prayed that the order dated 23rd April, 2001 passed by the learned Judicial Magistrate, First Class, Dahoi, granting "B" Summary in Dabhoi Police CR. no.I 206/2000 be quashed and set aside and the present Criminal Revision Application be allowed.

4. As against this, the learned Counsel Mr.K.B.Pujara for the respondent no.1 has submitted that a false complaint has been lodged against the respondent no.1 by the applicant at the instance of and under the instructions of the District Education Officer on account of difference of opinion that existed between the respondent no.1 and the District Education Officer, and therefore, the learned Judicial Magistrate, First Class, Dabhoi, has rightly appreciated the evidence on record and arrived at a just and proper conclusion in granting the "B"Summary. Mr. K.P.Raval, learned A.P.P. has adopted the very same arguments as canvassed by Mr. Pujara and contended that the Revision Application deserves to be dismissed at the threshold.

5. Now, it is an admitted position that the incident in question had taken place in the year 1995-96 and the complaint was lodged after four years. In pursuance to complaint filed by the complainant-Education Inspector, the Investigating Office has filed his report under Section 173 of the Cr.P.C. According to the Investigating Officer, in spite of repeated requests made by him to the complainant for production of documentary evidence if any with regard to cutting of the Nilgiri trees as alleged, the complainant had not bothered to do so. The report further reveals that the Investigating Officer upon visiting the school premises could not find any trace with regard to cutting of trees but on inquiry from the teachers who were working in the said school, he

learnt that four or five Nilgiri trees got uprooted on account of the cyclone which hit the area in the year 1995. It was also learnt that another 25 to 30 trees were cut down with due permission from the Superior Officers and the sale proceeds of those trees amounting to Rs.2100/- were deposited alongwith interest by the respondent no.1 and accordingly an amount of Rs.2300/-was deposited with the concerned authority through challan. On further inquiry, it also transpired that there existed difference of opinion between the respondent no.1 and the District Education Officer on administrative matters and that a false complaint has been filed at the instance of the District Education Officer. This coupled with the fact that in application Exh.4 there is a statement that the applicant does not want to proceed further with the matter as he has no personal knowledge with regard to the incident in question and that the complaint has been filed at the instance of the higher officer would clearly go to suggest that a false complaint has been lodged against the respondent no.1 in order to settle the scores in connection with some difference of opinion as discussed above. I have also carefully perused the reasoning of the trial Court in the impugned judgment and have cross-checked the reasoning with the evidence on record. I am fully satisfied that the reasoning and findings recorded by the learned Judicial Magistrate, First Class, Dabhoi, are consistent with the material on record. I am therefore constrained to hold that the learned Magistrate was perfectly justified in passing the judgment and order dated 23rd April, 2001 granting "B" Summary in Dabhoi Police CR No.I 206/2000.

6. In the result, there being no substance in this Revision Application, the same fails and is dismissed.

(M.D.Shah,J.)

stanley-mds.